ALASKA STATE LEGISLATURE
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October 25, 2010

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Dental Examiners (BDE), and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY
AND ECONOMIC DEVELOPMENT
BOARD OF DENTAL EXAMINERS

September 30, 2010

Audit Control Number
08-20069-10

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Under AS 08.03.010(c)(7), BDE will terminate on June 30, 2011. If the legislature does not extend the termination date, BDE will have one year to conclude its administrative operations. In our opinion, BDE's termination date should be extended until June 30, 2019. BDE is serving the public's interest by promoting the competence and integrity of those who provide services to the public as licensed dentists and dental hygienists.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Board of Dental Examiners (BDE) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner.

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether BDE should be reestablished. Currently, under AS 08.03.010(c)(7), BDE will terminate on June 30, 2011, and will have one year from that date to conclude its administrative operations.

Objectives

The three central, interrelated objectives of our report are:

1. To determine if the termination date of BDE should be extended.

2. To determine if BDE is operating in the public's interest.

3. To determine if BDE has exercised appropriate regulatory oversight of licensed dentists and dental hygienists.

The assessment of the operations and performance of BDE was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for BDE.

Scope and Methodology

The major areas of our review were board proceedings, licensing, complaint investigations, and resolution functions from FY 05 through FY 10. During the course of our examination, we reviewed and evaluated the following:

- Applicable statutes and regulations related to the licensing of dentists and dental hygienists.

- Minutes of BDE meetings.

- Annual reports issued by BDE.

- Complaints filed with the Department of Commerce, Community, and Economic Development (DCCED), Division of Corporations, Business, and Professional

Licensing (DCBPL), Office of the Ombudsman, and the Alaska Human Rights Commission.

- Financial records related to the revenues generated and the operating costs incurred by BDE.

- Files related to applicants for and holders of licenses issued by BDE.

- Complaint and related investigative case files maintained by DCBPL's investigative unit.

- Files related to applicants for board member seats maintained by the Office of the Governor's Division of Boards and Commissions.

Additionally, we interviewed DCCED, DCBPL employees.

ORGANIZATION AND FUNCTION

The Board of Dental Examiners (BDE) was established in 1955. As shown below in Exhibit 1, this regulatory board is comprised of six licensed dentists, two licensed dental hygienists, and one public member. The dentists and dental hygienists must have been practicing in Alaska for the five years immediately preceding their appointment to BDE. Alaska Statute also requires that the public member of the board have no direct financial interest in the occupation BDE regulates. Board members are appointed by the governor and serve staggered terms of four years.

Alaska Statute 08.36.070 establishes BDE's authority and includes:

- Examining and issuing licenses to qualified applicants.
- Holding hearings and ordering the disciplinary sanction of a person who violates the provisions of AS 08.32, AS 08.36, or a BDE regulation.
- Adopting regulations ensuring that license renewal is contingent upon proof of continued competency.
- Issuing permits to licensed dentists and dental hygienists who meet standards determined by BDE for specific procedures that require specific education and training.

Exhibit 1

Board of Dental Examiners
(As of September 1, 2010)

Robyn Chaney
Public Member

David L. Eichler
Dentist

Cheryl Fellenberg
Dental Hygienist

Thomas J. Wells
Dentist

Mary Ann Navitsky
Dentist

Arne R. Pihl
Dentist

Deborah W. Stauffer
Dental Hygienist

Newell Walther
Dentist

Clifford D. White
Dentist

BDE is responsible for safeguarding the public's interest by ensuring the competence and integrity of those who hold themselves out to the public as dentists and dental hygienists. BDE evaluates the qualifications of candidates, administers examinations, issues certificates and licenses to practice, promulgates the rules of professional conduct, and takes disciplinary action.

The Department of Commerce, Community, and Economic Development (DCCED), Division of Corporations, Business, and Professional Licensing (DCBPL)

DCCED, DCBPL provides administrative and investigative assistance to BDE. Administrative assistance includes budgetary services and functions such as collecting fees,

maintaining files, receiving and issuing application forms, and publishing notices of examination and meetings.

Alaska Statute 08.01.065 requires DCCED, with the concurrence of BDE, to adopt regulations establishing the amount and manner of payment of fees for applications, examinations, licenses, registration permits, investigations, and all other fees as appropriate for the occupations covered by the statute.

Alaska Statute 08.01.087 empowers DCBPL with the authority to conduct an investigation on its own initiative or in response to a complaint.

The DCBPL may:

1. Conduct an investigation if it appears a person is engaged or is about to engage in a prohibited professional practice.
2. Bring an action in Superior Court to enjoin the act.
3. Issue subpoenas for the attendance of witnesses and records.

REPORT CONCLUSIONS

The Board of Dental Examiners (BDE) is operating in an efficient and effective manner and should continue to regulate the professions of dentists and dental hygienists. We believe BDE is safeguarding the public's interest by ensuring the competence and integrity of those who present themselves to the public as licensed dentists and dental hygienists.

BDE has conducted its business in a satisfactory manner. It continues to propose changes to regulations to improve its effectiveness and ensure that professionals are properly licensed.

Alaska Statute 08.03.010(c)(7) terminates BDE on June 30, 2011. If not extended by the legislature, under AS 08.03.020, BDE will have a one-year period to administratively conclude its affairs. We recommend the legislature extend BDE's termination date to June 30, 2019.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Division of Corporations, Businesses, and Professional Licensing's (DCBPL) chief investigator should take steps to ensure complaints and cases are investigated timely.

DCBPL's investigation section often does not complete investigations in a timely manner. The section's effectiveness is further diminished by the outdated and unreliable Enforcer database system currently in use.

It is DCBPL's responsibility to provide investigative support for BDE. Investigators examine and research each complaint to determine jurisdiction and whether a violation exists. If the complaint meets these conditions, a case is opened and a priority level is assigned.[1] The priority level reflects the degree of imminent danger to the public.

During the period of July 1, 2006 through March 31, 2010, there were a total of 40 complaints and 32 cases active. Of these, we inspected six complaints and five cases for a more in-depth analysis.

Three complaints and one case were inactive for lengthy periods (six months or more). The case that was inactive for a lengthy period was designated as a *priority level 2*, but no activity has been documented since it was opened on January 29, 2008.

Investigative staff attributed the delays in case investigations to higher priority cases and tasks taking precedence. Staff also believe the investigative database contributed to the problem. The database does not have a user-friendly mechanism for flagging inactive cases. Consequently, supervisors and investigators are not effectively monitoring caseloads. Ineffective monitoring leads to unnecessary delays.

Complaints and cases that are not investigated timely may allow an individual who is practicing inappropriately or outside his or her scope to continue these violations.

Cases with life threatening repercussions should take priority; however, it is still reasonable for the public to expect that all complaints against licensees will be addressed as efficiently

[1]A *priority level 1* signifies incidents which represent an immediate danger to the public health and safety. A *priority level 2* signifies incidents which, by the severity of their nature, dictate a high priority. A *priority level 3* signifies incidents that are less serious in nature and do not appear to constitute immediate or sever public danger or serious damages. A *priority level 4* signifies incidents involving failure to comply with statutes or regulations which are discovered through the course of proactive enforcement but do not meet the criteria of priority 1 through 3.

as possible. We recommend DCBPL's chief investigator establish procedures to ensure priorities within each assigned level are outlined as well as cases and complaints with periods of inactivity are identified and addressed.

ANALYSIS OF PUBLIC NEED

The following analyses of board activities relate to the public need factors defined in AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

Determine the extent to which the board, commission, or program has operated in the public interest.

The Board of Dental Examiners (BDE), through regulation of the licensure of dentists and dental hygienists, has provided the public with qualified professionals in the dental industry. The profession has adopted regulations related to continuing professional education to ensure licensees remain current in the field of dentistry and dental hygiene practice.

BDE licenses applicants by (1) examination and (2) credentials. Licensure by examination requires passing the exam administered by the Western Regional Examining Board. Licensure by credentials requires that the applicant document their previous work history as a dentist or dental hygienist as a basis for receiving a state license to practice.

BDE has successfully implemented changes and modifications to regulations and statutes that govern fields it covers. The new modifications to the statutes and regulations include, but are not limited to:

1. Inspections and registration of radiological equipment (12 AAC 28.965 and 12 AAC 28.960 respectively).
2. Creation of a limited license allowing a person not licensed in Alaska to practice for a specified time period for a specified reason. This will increase the ability of rural communities in Alaska to receive dental care (12 AAC 28.955).
3. Allowing a maximum of four hours of CPR training to be counted for meeting overall continuing education hours for each renewal period (12 AAC 28.410).

Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

Under AS 08.01.065(c), the Department of Commerce, Community, and Economic Development must *"establish fee levels… so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs of the occupation."* BDE reviews and provides feedback on changes to fees proposed by the division.

BDE revenues come from licensing and renewal fees. Renewals are conducted on a biennial basis. This creates a two-year cycle in BDE revenues, with BDE receiving most of its

revenues during the odd-numbered fiscal years. We reviewed the Division of Corporations, Business, and Professional Licensing's (DCBPL) internal records to identify BDE revenues and expenditures. Renewal and permit fees for dentists and dental hygienists were reduced for the FY 09 renewal cycle.

Exhibit 2 (below) presents BDE's revenues and expenditures for FY 07 through FY 10.

Exhibit 2

State of Alaska
Board of Dental Examiners
Schedule of Revenues and Expenditures
FY 07 - FY 10
(Unaudited)

		FY 07	FY 08	FY 09	FY 10
Revenue	$	416,333	127,664	334,845	47,740
Direct Expenditures					
Personal Services		60,392	46,306	74,937	94,571
Travel		18,121	20,764	24,409	29,444
Contractual		38,772	39,181	60,953	29,464
Supplies		230	954	1,018	1,038
Equipment					
Total Direct Expenditures		117,515	107,205	161,317	154,517
Indirect Expenditures		104,085	88,869	85,055	81,158
Total Expenditures		221,600	196,074	246,372	235,675
Annual Surplus (Deficit)		194,733	(68,410)	88,473	(187,935)
Beginning Cumulative Surplus (Deficit)		114,200	308,933	240,523	328,996
Ending Cumulative Surplus (Deficit)	$	308,933	240,523	328,996	141,061

Determine the extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

BDE has made numerous recommendations for statute changes. These are mostly comprised of changes to the wording of existing statutes. To date, these changes have not been made.

Determine the extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

The locations, date, and time of upcoming BDE meetings and notices of proposed changes in regulations were published in the Anchorage Daily News, BDE's internet website, and the State's on-line public notice internet website. The State also offers a subscription service whereby the State will e-mail the subscriber requested public notices. Meeting minutes and agendas indicate time was set aside for BDE to take public comment. BDE minutes also reflected public participation throughout the meetings. Proposed regulations are circulated to those affected by the proposed regulations through professional trade journals, public notice advertisement, or direct mail correspondence from DCBPL.

Determine the extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

Public notices of proposed regulations are published in major newspapers. Meetings are adequately advertised, and time is set aside for public testimony.

Public members as well as practitioners are given the opportunity to address BDE at each meeting. The majority of the comments received were in regards to proposed changes to statutes and regulations that were proposed by both BDE and the public. Members of the public also sought BDE clarification on statutes and regulations.

Practitioners are especially concerned with the limitations of dentists holding specialty and general licenses. Statutes currently require that a dentist who holds both licenses must limit the scope of practice to that of the specialty and cannot practice general dentistry. BDE is working with the Department of Law for a determination on this issue.

Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

As of late March 2010, there were 40 complaints and 32 cases active during the time period beginning July 1, 2006, and ending March 31, 2010. Listed in Exhibit 3 (following page) is a summary of the actions taken by BDE for these complaints and cases.

Exhibit 3

Complaints	**Number of Actions**
Case opened	6
Dismissed (no violation, insufficient evidence, etc.)	24
Corrective Action Taken	7
Advisement Letter	2
Other	1
Total Complaints	**40**
Cases	
Dismissed (no violation, insufficient evidence, etc.)	2
License Action	16
Corrective Action Taken	1
Other	6
Still Under Investigation	7
Total Cases	**32**

Of these, we inspected 6 complaints and 5 cases for a more in-depth analysis. The analysis shows that investigations need to be more timely. (See Recommendation No. 1.)

No complaints or investigation specifically involving the actions and activities of BDE were received, or undertaken by either the Office of the Ombudsman or the Office of Victim's Rights within the past six fiscal years.

Determine the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.

BDE is adequately regulating entry into the professions of dentistry and dental hygienists. Controls are in place and consistently performed to ensure it has presented only qualified applicants to serve the public. BDE considers each applicant, interviews those applying by credentials, and verifies that licensing requirements are satisfied prior to issuing a license.

Listed in Exhibit 4 (below) is a summary of new licenses and permits issued by BDE for the period beginning July 1, 2006, and ending June 30, 2009.

Exhibit 4

New Permits Issued (Excluding Renewals)	**FY 06**	**FY 07**	**FY 08**	**FY 09**	**Total Licenses** (as of June 30, 2009)
Dental Hygienist	29	29	29	32	516
Dentist	27	38	26	36	637
Local Anesthetic Permit	25	25	22	31	428
Specialty License	4	1	4	11	105
Parenteral Sedation Permit	2	0	2	2	37
General Anesthetic Permit	0	0	0	1	21

The application process for licensing is reasonable and appropriate. BDE is not creating barriers into entry, nor allowing unqualified individuals to practice. Continuing education is

required by BDE to promote a high level of quality performance and to help ensure the integrity of the profession.

Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

We did not find any evidence that BDE was not in compliance with state personnel practices, including affirmative action in qualifying applicants. In no instances has BDE denied an applicant a license based on a person's attributes.

Determine the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

In its recent annual reports, BDE has made several recommendations for proposed statutory and regulatory changes. The FY 09 annual report listed the following recommendations:

1. Add Dental Hygienists to AS 08.36.070(12). This recommendation proposes to allow dental hygienists to obtain a waiver from CPR training due to physical impairments. The statute already allows dentists to obtain such a waiver.

2. Change the clinical hours for licensure by credential in AS 08.36.234(a)(1)(D). This recommendation proposes to change the current wording to say that BDE will allow a dentist to be licensed if he or she proves to BDE that he or she "*has been engaged in continuous active clinical practice averaging at least 1000 hours per year for each of the five years immediately preceding the application*." Currently, the statute says that an applicant must prove to BDE:

   > *[The applicant] has been engaged in either continuous active clinical practice averaging at least 20 hours a week for a full-time dental supervisory position in an agency of, or the armed forces of, the United States for each of the five years immediately preceding the application.*

3. Add the requirements of clinical and ethical competence to AS 08.36.234(a)(7). This recommendation proposes to add another subsection to AS 08.36.234(a) that, as a prerequisite to licensure, an applicant "*provides to the board satisfactory letters of recommendations that support the applicant's clinical and ethical competence. Unfavorable references may be the basis for denial of license.*"

4. Allow specialty license holders to practice general dentistry under AS 08.36.246. This change affects both AS 08.36.246 and AS 08.36.110. The intent of this change is to drop stand-alone, dental specialty licenses and allow for only general dental licenses with the specialty as an endorsement of that license.

To date, only recommendation number one has been completed by use of the words "*applicant or licensee*" in the 2009 Alaska Statutes.

This report makes no recommendations for statutory, regulatory, or budgetary changes.

Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.

BDE has met its purpose and objectives effectively and efficiently during the period under review.

BDE enacted a number of regulation changes, including:

- Requiring an applicant for licensure by examination to pass the written Alaska jurisprudence examination authorized under AS 08.32.060 and conducted by BDE with a passing score of at least 70 percent.

- Requiring first time renewals of active licenses to submit documentation evidence of continued professional competence.

Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

We did not find evidence of other state or private agencies that duplicate the efforts of BDE.

We identified two national organizations, the American Dental Association and the American Dental Hygienist Association, that provide educational advancement and suggestions. These organizations do not have regulatory capabilities; therefore, BDE is not duplicating the activities of another governmental agency or the private sector.

STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT
Office of the Commissioner

Sean Parnell, Governor
Susan Bell, Commissioner

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November 19, 2010

Ms. Katina Holmberg
Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Re: Preliminary Report, Department of Commerce, Community Economic Development (DCCED) Board of Dental Examiners (BDE)

Dear Ms. Holmberg:

Thank you for your letter dated September 30, 2010 regarding audit findings and recommendations concerning the State Board of Dental Examiners. I appreciate your review and the opportunity to provide input into the process. In general, the department concurs with the report conclusions and recommendations and our comments are provided below.

Report Conclusion
DCCED agrees with the report conclusion that "BDE is operating in an efficient and effective manner and should continue to regulate the professions of dentists and dental hygienists. We believe the board is safeguarding the public interest by ensuring the competence and integrity of those who present themselves to the public as licensed dentists and dental hygienists." DCCED diligently strives to fulfill its duty of supporting licensed professionals and State boards to protect the public.

Recommendation No.1
DCCED concurs that the Division of Corporations, Businesses, and Professional Licensing (CBPL) chief investigator should take steps to ensure complaints and cases are investigated timely, and the department has already implemented positive measures toward that end. Specifically, the management letter recommends establishing procedures to ensure priorities are outlined and that cases and complaints with periods of inactivity are identified and addressed. The management letter also presents that staff believe the existing database did not have a user-friendly mechanism for flagging inactive cases and this contributed to delays.

DCCED was previously aware of the above described issues and took steps to improve timely investigations, including management changes, investments in updated technology, and staff training. A

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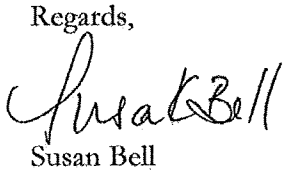
new Chief Investigator was hired in July 2010 and will be establishing procedures to outline priorities and to identify cases with inactive periods. In June 2010 CBPL implemented a new database system (GLSuite) that has significant functionality improvements over the prior outdated "Enforcer" system, including a more user-friendly mechanism for flagging inactive cases. In addition, staff training has and will continue to occur to maximize the utilization of the new system. CBPL expects that these steps will help ensure complaints and cases are investigated in a timely manner.

Analysis of Public Need
DCCED reviewed the information presented in this section of the preliminary report and has no additional comments.

Again, thank you for an opportunity to provide input. We are pleased your review has, in general, found the Board of Dental Examiner's system to be working well. Should you have any questions about the contents of this letter, please do not hesitate to contact me at 907-465-2500.

Regards,



Susan Bell
Commissioner

Cc: Don Habeger, Director CBPL
JoEllen Hanrahan, Director ASD

David L. Eichler, D.M.D., P.C.

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November 2, 2010

Pat Davidson
Division of Legislative Audit
P. O. Box 113300
Juneau, AK 99811-3300

Dear Pat:

This is a response to your preliminary audit report for Sunset Review of the Board of Dental Examiners. I agree absolutely with your recommendation #1 that the DCBPL needs to address all complaints and investigations in a timely manner. This has been a serious concern of the Board for at least my tenure of nearly eight years and by report, for much longer. The Board has been rebuffed by DCBPL and the Department of Law in any efforts to exercise influence and direction in the manner in which the investigative office operates. We invite the legislature to exert any influence if may have to assist us in this area.

One other subject needs to be addressed. By statute approximately eleven years ago, responsibility for dental radiological equipment inspections was placed with the Board. So far, adequate personnel and database support has not been appropriated to enable the Board to properly carry out this function so this needs to be addressed to properly safeguard the public.

We, in collaboration with the Dental Society and Dental Hygiene Association, have embarked on a major revision of the dental statures as recommended by the Department of Law. We hope this will enable the Board to be more effective in its function.

Thank you for this opportunity to participate in this process.

Sincerely,

David Eichler
President, Alaska Board of Dental Examiners